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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,088	02/16/2002	Graham Lindley Spruiell	IMA-0014-OXYPAK	7112
42416	7590	11/24/2004	EXAMINER	
EDWARD L. KELLEY DBA INVENTION MANAGEMENT ASSOC. 4 MILITIA DRIVE LEXINGTON, MA 02421			MENDOZA, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/075,088

Applicant(s)

SPRUIELL, GRAHAM LINDLEY

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-17, 19, 21, 22 and 25-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-17, 19, 21, 22 and 25-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. In view of the Reply Brief filed on 26 April 2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7, 8, 14-16, 28, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Zapol et al. 5485827.

4. Zapol et al. teaches an emergency medical kit, comprising a breathable oxygen delivery system and a medication for use in response to symptoms of an attack of a

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vascular disease; wherein the medication is prescribed for a particular user by a physician (col. 11, line 54-60).

5. Claims 9, 10, 14-16, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Zapol et al. 6063407.

6. Zapol et al. teaches an emergency medical kit, comprising a breathable oxygen delivery system and a cardioprotective agent for use in response to symptoms of a particular serious illness as soon as the symptoms occur; wherein the cardioprotective agent comprises one of a nitrate, a beta blocker, an ACE inhibitor, (aspirin) acetylsalicylic acid, clopidogrel, heparin and glycoprotein (col. 5, lines 42-46; col. 1 lines 24-29)

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-4, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol et al. in view of Monhan 4699288.

9. Zapol et al. teaches the emergency medical kit of claim 7 wherein the breathable oxygen delivery system comprises a portable oxygen tank for storing oxygen under high pressure. It should be noted that Zapol et al. fails to specifically teach wherein portable oxygen tank comprises a composite material over wrapped onto a gas impermeable inner vessel.

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10. Monhan teaches a portable oxygen tank with a common composite material. Therefore it would have been obvious to one of ordinary skill in the art to modify the oxygen tank of Anderson to include the composite material of Monhan for a light weight, fragmentation resistant vessel that is inexpensive to manufacture for portable safety (col. 1, lines 38-41).

11. As to claims 3 and 4, Zapol/Monhan teaches a portable system. It should be noted that Zapol/Monhan fails to teach wherein the portable oxygen tank is less than 5.0 pounds or less than 2.0 pounds. However, it would have been obvious to one of ordinary skill in the art to make the oxygen tank as lightweight as possible, including the claimed limitations, to make the system as light weight/portable as possible.

12. As to claims 26 and 27, emergency medical kit of Zapol/Monhan is fully capable of being used in response to a heart attack or a stroke.

13. Claims 5, 13, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol et al. in view of Anderson 4197842.

14. Zapol et al. teaches an emergency medical kit, comprising: a breathable oxygen delivery system and a medication for use in response to symptoms of an attack of a vascular disease as soon as the symptoms occur and wherein the breathable oxygen delivery system comprises: an oxygen storage tank. It should be noted that Zapol et al. fails to specifically teach wherein the oxygen delivery system comprises a portable oxygen tank having at least 50 cubic inch internal storage capacity, an oxygen storage operating pressure range of between 100 and 400 PSI (col. 1, lines 60-63); a regulator valve; an oxygen delivery tube; and a user oxygen delivery device.

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15. Anderson teaches an emergency medical kit with a common oxygen delivery system. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed limitations for portability.

Futhermore, it is well known in the art for an oxygen storage tank to have a regulator for controlling the amount of pressurized gas released from the container.

16. It should also be noted that Zapol and Anderson fail to teach wherein the portable oxygen tank is less than 5.0 pounds or less than 2.0 pounds. However, it would have been obvious to one of ordinary skill in the art to make the oxygen tank as lightweight as possible, including the claimed limitations, to make the system as light weight/portable as possible.

17. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol/Anderson in view of Lowell et al. 6292687.

18. Zapol/Anderson teaches the emergency medical kit of claim 5. It should be noted that Anderson fails to teach the kit further comprising one of a wireless communication device and a loud noise-making device.

19. Lowell et al. teaches a common wireless communication device 31 and a loud noise-making device 30 for detecting, location and responding to a predetermined medical emergency. Therefore it would have been obvious to one of ordinary skill in the art to modify the kit of Zapol/Anderson to include the devices of Lowell et al. to alarm that a victim needs immediate help, and also to provide immediate information of the victim's location (col. 2, lines 62-64).

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20. Claims 19, 21, 22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol et al. in view of Kirchgeorge et al. 6327497.

21. Zapol et al. teaches a method for treating a serious attack of a vascular disease immediately upon the onset of one or more symptoms of the attack comprising the steps of: establishing a risk (col. 4, lines 46-50); predetermining a treatment; providing the patient with a portable emergency medical kit (col. 6, lines 56-59); teaching the patient how to recognize the symptoms of the serious attack and how to carry out the treatment (col. 4, lines 52-61). It should be noted that Zapol fails to teach the portable emergency medical kit including a supply of breathable oxygen.

22. Kirchgeorge et al. teaches a common portable emergency medical kit including a supply of breathable oxygen 70 for reviving a victim. Therefore it would have been obvious to one of ordinary skill in the art to include the method step of supply oxygen to a victim of Kirchgeorge et al. for restoring the proper oxygenation and cell perfusion necessary for survival (col. 1, lines 51-52).

23. Zapol/Kirchgeorge teaches the method of claim 19 further comprising the step of providing a medication in the portable emergency kit for one of: assisting in preventing thrombosis; assisting in inducing arteriolar relaxation.

24. Claims 12, 28, 29, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol et al. in view of Duhaylongsod 6141589.

25. Zapol et al. teaches an emergency medical kit, comprising a breathable oxygen delivery system. It should be noted that Zapol et al. fails to teach an antiarrhythmic agent.

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26. Duhaylongsod teach a common inhalable antiarrhythmic agent medication (col. 18, lines 48-50) comprising magnesium for controlling the heart (col. 5, lines 27-32).

Therefore it would have been obvious to one of ordinary skill in the art to include the antiarrhythmic of Duhaylongsod for precise pacing and control of cardiac contraction during heart attacks or surgery.



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### ***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on (571) 272-4694. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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